

MERCHANTS INVESTMENT CO.  
244 EAST WEST COURT  
SUITE 320  
PALATINE, IL 60067  
(312) 991-8840

RECORDATION NO. 5384

NOV 23 1987 - 10 20 AM

INTERSTATE COMMERCE COMMISSION

Nov. 19, 1987

Secretary  
Interstate Commerce Commission  
Washington, DC 20423

11/23/87  
Date  
Fee \$ 50.00 return 40

ICC Washington, D. C.

Dear Secretary:

I have enclosed an original and one copy of the documents described below, to be recorded pursuant to Sec. 11303 of Title 49 of the U.S. Code.

The documents are a "Car Leasing Agreement" with "Rider No. 1", a primary document.

The names and addresses of the parties to the document are as follows:

LESSOR: Merchants Investment Co.  
244 East West Ct., #320  
Palatine, IL 60067

LESSEE: Elkem Metals, Inc.  
PO Box 299  
Marietta, OH 45750

Assignee: Suburban National Bank of  
Palatine  
800 E. Northwest Hwy.  
Palatine, IL 60067

EQUIPMENT DESCRIPTION::

AAR DESIGNATION	LO
IDENTIFYING MARKS	CREX 971 and 972
LOAD CAPACITY	100 TON
CU. FT. CAPY.	3000

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to State National Bank of Palatine; 800 E. Northwest Hwy; Palatine, IL 60067; ATTN: Mr. Mike Bauer. Mr. Bauer's phone number is (312) 934-2100.

A short summary of the document to appear in the index follows: Lease Agreement with Rider #1 between Merchants Investment Co. and The Elkem Metals providing for leasing of railroad equipment described therein.

MERCHANTS INVESTMENT CO.

by Donald T. Hicks  
Donald T. Hicks, VP

P.S. copy is NOTALIZED.

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

11/23/87

State National Bank Of Palestine  
800 E. Northwest HWY.  
Palatine, Illinois 60067

Att; Mike Bauer

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/23/87 at 10:20am, and assigned recordation number(s). 15384

Sincerely yours,

*Norita R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

MERCHANTS INVESTMENT CO.

1 5384  
REGISTRATION NO. \_\_\_\_\_ Filed 1425

CAR LEASING AGREEMENT

NOV 23 1987 - 10 20 AM

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of the 15th of May, 1987  
by and between MERCHANTS INVESTMENT CO., an Illinois corporation, (here-  
inafter called "Merchants"), and Elkem Metals Co.,  
a New York Partnership, with its principal place of  
business at Pittsburgh, Pennsylvania  
(hereinafter called "Lessee").

W I T N E S S E T H:

1. Cars covered by Lease. Merchants agrees to furnish and lease to Lessee, and Lessee agrees to accept and use upon the terms and conditions herein set forth, the cars covered by the riders attached hereto and such additional riders as may be added hereto from time to time by agreement of the parties, and any and all other cars delivered to and accepted by Lessee. Each such rider shall set forth the number of cars, the rental rates, terms of use, car numbers, and other pertinent information that may be desired by both parties. All cars leased pursuant to such riders, or otherwise delivered to and accepted by Lessee, are subject to the terms of this Agreement.

2. Delivery and Use of Cars. Merchants agrees to deliver the cars to Lessee at a point or points designated by Lessee. Merchants' obligation as to such delivery shall be subject to all delays resulting from causes beyond its control. Lessee agrees to use the cars exclusively in its own service, except as hereinafter provided, and none of the cars shall be shipped beyond the boundaries of the United States or Canada except with the prior written consent of Merchants. Lessee agrees that if any of the cars are used outside of Continental United States, Lessee shall reimburse Merchants for any customs duties, taxes, or other expenses resulting from such use.

3. Payment of Rental Charges. Lessee agrees to pay the rental charges with respect to each of the cars from the date of delivery thereof and until such car is returned to and accepted by Merchants. Such rental charges shall be paid to Merchants at its principal office, 244 East West Court, Palatine, Illinois, 60067, in advance on the first day of each month, prorating, however, any period which is less than a full month.

4. Inspection and Acceptance. Each of the cars shall be subject to Lessee's inspection upon delivery to Lessee. Failure to report any defect in the car within a reasonable time after delivery of the car or the loading of each such car by Lessee or at its direction shall constitute

acceptance thereof by Lessee, and shall be conclusive evidence of the fit and suitable condition thereof for the purpose of transporting the commodities then and thereafter loaded therein or thereon.

5. Records of Movements. Lessee agrees to keep records pertaining to the movement of the cars, and Lessee agrees to promptly furnish Merchants with complete reports of the car movements, including dates received, loaded and shipped, commodity, destination, and full junction routing, and all information which Lessee may receive from railroad companies or other sources which may be of use to Merchants. Merchants shall collect the mileage earned by the cars, and, subject to all rules of the tariffs of the railroads, Merchants shall credit to Lessee's rental account such mileage as and when received from the railroads, but in no event shall the aggregate annual amount of mileage credited exceed the aggregate monthly rentals for the term of this Agreement. Mileage earning for all cars covered by this Agreement shall be carried in a consolidated account.

6. Certain Reimbursements. Lessee agrees to reimburse Merchants for any payment Merchants may be required to make to any railroad, due to mileage equalization where applicable, resulting from excess empty mileage incurred by the cars on such railroad. For the purpose of this paragraph the railroad mileage and junction reports shall be prima facie evidence of the facts reported therein. In addition, if Merchants is required to make any payments to a railroad resulting from the empty movement of any of the cars while they are in Lessee's service, Lessee agrees to reimburse Merchants for such payments.

7. Repairs of Cars. Lessee shall promptly notify Merchants upon receipt by Lessee of knowledge of any damage to any of the cars. Merchants agrees to pay for the maintenance and repair of the cars, except as hereinafter provided. Lessee shall not repair, or authorize the repair of, any of the cars without Merchants prior written consent, except that running repairs (as specified in the Association of American Railroads Rules for Interchange) may be performed without prior written consent. The amount Merchants will pay for such running repairs shall not be in excess of the basis, in effect at the time the repair is made, provided by the Association of American Railroads. If any car becomes unfit for service and shall be held in car shops for repairs and shall remain therein for a period in excess of five days, the monthly rental with respect to such car shall abate from and after such period of five days until such car is released from the shop or until another car shall have been placed in the service of Lessee by Merchants in substitution for such car.

8. Total Damage or Destruction of Cars. In the event any car is totally damaged or destroyed, the rental with respect to such car shall terminate upon receipt by Merchants of notification thereof, and in the event any car is reported to be bad ordered and Merchants elects to permanently remove such car from Lessee's service rather than have such car

taken to a car shop for repairs, the rental with respect to such car shall terminate upon receipt by Merchants of notification that such car was bad ordered. Merchants shall have the right, but shall not be obligated, to substitute for any such car another car of the same type and capacity and the rental in respect to such substituted car shall commence upon delivery of such substituted car to Lessee.

9. Damages Attributable to Lessee. In the event that any of the cars, or the fittings, appliances or appurtenances thereto, shall be damaged, ordinary wear and tear excepted, or destroyed either as a result of the acts of any of Lessee's employees, agents or customers or from any commodity or other material loaded therein or thereon, Lessee agrees to assume financial responsibility for such damage or destruction.

10. Loss or Damage of Commodities. Merchants shall not be liable for any loss of or damage to commodities, or any part thereof, loaded or shipped in or on the cars, and Lessee agrees to assume financial responsibility for, to indemnify Merchants against, and to save it harmless from any such loss or damage.

11. Replacement of Appliances or Removable Parts. Lessee, at its own expense, shall either replace or reimburse Merchants for the cost of replacing any appliance or removable part, if destroyed, damaged, lost, removed or stolen, unless the railroads transporting the cars have assumed full responsibility for such loss or damage, or unless such loss or damage results from the negligence or omission of Merchants, its agents or employees.

12. Interior Protective Linings. The application, maintenance and removal of interior protective lining in any of the cars is to be performed by and at the expense of Lessee unless otherwise specifically provided for in the applicable rider.

13. Indemnification. Lessee agrees to indemnify and hold Merchants harmless from and against any loss, liability, claim, damage or expense (including, unless Lessee assumes the defense, the reasonable cost of investigating and defending against any claim for damages) arising out of or in connection with the use of the cars during the term of this Agreement, excepting, however, any loss, liability, claim, damage or expense which accrued with respect to any of the cars (i) while such car is in a repair shop undergoing repairs; (ii) which is attributable to the negligence or omission of Merchants, its agents or employees; or (iii) for which a railroad or railroads have assumed full responsibility, including investigating and defending against any claim for damages.

14. Markings on Cars. No lettering or marking of any kind shall be placed upon any of the cars by Lessee except with the prior written consent of Merchants.

15. Load Limits. Lessee agrees not to load any of the cars in excess of the load limit stenciled thereon.

16. Demurrage and Other Charges. Lessee shall be liable for any demurrage, track storage or detention charge imposed in connection with any of the cars as well as loss of or damage to any car while on any private siding or track or on any private or industrial railroad or in the custody of any carrier not subject to the Association of American Railroads Rules for Interchange.

17. Transfer or Assignment of Interest in Cars. Lessee shall make no transfer or assignment of its interest under this Agreement in and to the cars without Merchants' prior written consent, except that Lessee may sublease any of the cars to its customers for single trips consistent with its normal merchandising methods; provided, however, that notwithstanding any such sublease, Lessee shall continue to remain liable to Merchants under all conditions and terms of this Agreement. No right, title or interest in any of the cars shall vest in Lessee by reason of this Agreement or by reason of the delivery to or use by Lessee of the cars, except the right to use the cars in accordance with the terms of this Agreement.

18. Failure of Performance. If Lessee shall fail to perform any of its obligations hereunder, Merchants at its election may either (a) terminate this Agreement immediately and repossess the cars, or (b) withdraw the cars from the service of Lessee and deliver the same, or any thereof, to others upon such terms as Merchants may see fit. If Merchants shall elect to proceed in accordance with clause (b) above and if Merchants during the balance of the terms of this Agreement shall fail to collect for the use of cars a sum at least equal to all unpaid rentals hereunder to the stated date of termination hereof plus an amount equal to all expenses of withdrawing the cars from the service of Lessee and collecting the earnings thereof, Lessee agrees to pay from time to time upon demand by Merchants the amount of any such deficiency. It is expressly understood that Merchants at its option may terminate this Agreement in the event that a petition in bankruptcy or a petition for a trustee or receiver be filed by or against Lessee or in the event that Lessee shall make assignment for creditors.

19. Return of Cars. Upon the termination of each rider, Lessee agrees, subject to the provisions of paragraph 8 above, to return the cars to Merchants at the final unloading point or at such other place or places as are mutually agreed to, in the same or as good condition as received, ordinary wear and tear excepted, free from all charges and liens which may result from any act or default of Lessee, and free from all accumulations or deposits from commodities transported in or on the cars while in the service of Lessee. If any car is not returned to Merchants free from such accumulations or deposits, Lessee shall reimburse Merchants for any expense incurred in cleaning such car.

20. Taxes. Merchants agrees to assume responsibility for and to pay all U. S. property taxes levied upon the cars and to file all property tax reports relating thereto. Lessee agrees to assume responsibility for and to pay any applicable state sales, use or similar taxes resulting from the lease or use of the cars.

21. Markings Indicating Ownership. It is understood that some of the cars furnished Lessee under this Agreement and Merchants' rights under this Agreement may at the time of delivery to Lessee or at some future time during the term of this Agreement be subject to the terms of a Mortgage, Deed of Trust, Equipment Trust, Pledge or Assignment or similar security arrangement. Lessee agrees that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee, assignee or security holder and that this Agreement and Lessee's rights hereunder are and shall at all times be subject and subordinated to any and all rights of any mortgagee, trustee, pledgee, assignee or security holder. As to the cars subject hereto, this Agreement and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on each car as determined with reference to the filings with the Interstate Commerce Commission; however, until notified to the contrary by any person reasonably proving to the Lessee's satisfaction that he is the assignee of this Agreement or the rentals hereunder, the Lessee is to pay all rentals to the order of Merchants. Lessee hereby consents to and accepts such assignments. Lessee agrees that no claim or defense which Lessee may have against Merchants shall be asserted or enforced against any assignee of this Agreement.

22. Modifications Required. In the event the U. S. Department of Transportation, or any other governmental agency or non-governmental organization having jurisdiction over the operation, safety or use of railroad equipment, requires that Merchants add, modify or in any manner adjust the cars subject to this Agreement in order to qualify them for operation in railroad interchange. Lessee agrees to pay an additional monthly charge of \$1.75 per car for each \$100 expended by Merchants on such car, or such other monthly charge in lieu thereof, as may be provided for Modifications in any rider hereto, in any case effective as of the date the car is released from the shop after application of such additions, modifications or adjustments (hereinafter the "Modifications"). No rental credits will be issued on cars entering the shop for any Modifications for the first thirty days. In the event Merchants in its sole discretion determines prior to making any Modifications that the cost thereof is not economical to expend in view of the estimated remaining useful life of such car, and Merchants elects to permanently remove such car from Lessee's service rather than have such car taken to a car shop for such Modifications, the rental with respect to such car shall terminate upon the date specified in writing by Merchants, provided that such date must be prior to the date the Modification is so required to be made.

23. Binding Agreement. This Agreement shall be binding upon the parties hereto, their respective successors, assigns and legal representatives, and shall remain in full force and effect from the date hereof until the completion of the leasing arrangement shown on attached riders of the last car or cars hereunder, and all such cars are returned to Merchants.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in two counterparts (each of which shall be deemed an original) the day and year first above written.

MERCHANTS INVESTMENT CO.

By *Ronald R. Hicks*

ATTEST:

*Thomas D. New*

ELKEM METALS CO.

By *CE Bond*

ATTEST:

*Kathy Z. Demmyan*



*H. Crist Myers*



RIDER NO. 1  
Forming Part of

MERCHANTS INVESTMENT CO.  
CAR LEASING AGREEMENT WITH  
ELKEM METALS CO.

The cars described herein shall be subject to the terms and conditions of said Agreement during the term of use and for the rental set forth below:

<u>Number of Cars</u>	<u>Type of Car</u>	<u>Monthly Rental Per Car</u>
CREX 971 & CREX 972	100 ton, 3000 c.f. Pressure Flow	7/18-9/17/87 -0- 9/18/87-9/30/88 \$440 ea. 10/1/88-7/31/90 \$485 ea.

The term of use of each of the cars hereinabove described shall commence on the average date of delivery to Lessee at Alcoa Aluminum, Sandow, Texas (July 18, 1987). The lease shall continue for a period ending three (3) years from the first day of the month following the average date of delivery of all the cars to Lessee.

For each mile traveled in excess of 30,000 miles per car in a calendar year an additional charge of three (3) cents per mile will be charged.

MERCHANTS INVESTMENT CO.

By Ronald Hilde

ATTEST:

Thomas L. Lee

Elkem Metals

By CE Bad

ATTEST:

Kathy L. Demmy

CAR DESCRIPTION

TYPE OF CAR	- PRESSURE DIFFERENTIAL (P.D.)
BUILDER	- UNION TANK CAR (PRESSURE FLOW CAR)
DATE BUILT	- 1968/70
CAPACITY	- 100 TONS
CUBIC CAPACITY	- 3000
OVER ALL LENGTH	- 44'5"
EXTREME HEIGHT	- 15'1"
EXTREME WIDTH	- 10'8"
INSIDE LENGTH	- 41'1"
INSIDE HEIGHT	- 12'3"
INSIDE WIDTH	- 10'7"
LIGHT WEIGHT	- 61,500
TRUCKS	- ROLLER BEARING
HATCH COVERS	- 5 FLAT
COMPARTMENTS	- 1
SIZE OF INLET VALVE	- 3"
SIZE OF OUTLET VALVE	- 6"

TREN &amp; S MCL